

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

KAREN SUE SIMMONS,

Plaintiff,

v.

LAWRENCE LYNELL SIMMONS,

Defendant.

Case No. 1:19-cv-30

HON. JANET T. NEFF

OPINION AND ORDER

Defendant filed a notice of removal purporting to remove this divorce matter from the state court to this Court (ECF No. 1). Pursuant to 28 U.S.C. § 636(b)(1)(B), the Magistrate Judge issued a Report and Recommendation, recommending that the action be dismissed for lack of subject matter jurisdiction (ECF No. 8 at PageID.21). The Magistrate Judge stated: “Unlike state courts, which are courts of general jurisdiction, the federal courts are courts of limited jurisdiction and do not, therefore, possess jurisdiction over matters involving the issuance of a divorce, alimony, or child custody” (*id.*, citing, *e.g.*, *Ankenbrandt v. Richards*, 504 U.S. 689, 704 (1992)).

The matter is presently before the Court on Defendant’s Objection to the Report and Recommendation (ECF No. 10). Plaintiff has filed a Response to the Objection (ECF No. 17). Defendant presents no discernable valid objection to the Report and Recommendation. Defendant asserts that a fair reading of his removal notice (ECF No. 1) disclosed other events in the divorce proceeding that “sparked Emergency Protection of Defendant’s Due Process Rights and legal right to a fair proceeding to [sic] the United States District Court” (ECF No. 10 at PageID.27). Defendant’s conclusory statement fails to establish any cognizable basis for subject matter

jurisdiction in the circumstances presented. Defendant otherwise objects that the recommendation of dismissal is essentially a request for clarification of the pleading removed and that dismissal is premature (*id.* at PageID.29). However, absent jurisdiction, this Court has no basis for action in this case or on the numerous motions/requests Defendant has filed following the Report and Recommendation: motion for hearings in Kalamazoo (ECF No. 9); motion for coercive contempt sanctions against state administrative Judge Julie K. Phillips (ECF No. 12); motion to expedite Rule 16 Conference (ECF No. 13); emergency motion for in camera hearing, limited discovery and appointment of receivership (ECF No. 19); motion to enforce motion for civil coercive contempt order against Judge Julie K. Phillips (ECF No. 22); motion to join and strike Plaintiff's reply and answer (ECF No. 24); and application for default judgment (ECF No. 25).

Therefore, in accordance with 28 U.S.C. § 636(b)(1) and FED. R. CIV. P. 72(b)(3), the Court denies the objection and adopts the Magistrate Judge's Report and Recommendation as the Opinion of this Court. A Judgment will be entered consistent with this Opinion and Order. *See* FED. R. CIV. P. 58.¹

For the above reasons and because this action was filed *in forma pauperis*, this Court also certifies pursuant to 28 U.S.C. § 1915(a)(3) that an appeal of this Judgment would not be taken in good faith. *See McGore v. Wrigglesworth*, 114 F.3d 601, 610-11 (6th Cir. 1997), overruled on other grounds by *Jones v. Bock*, 549 U.S. 199, 206, 211-12 (2007).

Accordingly:

¹ Defendant did not include necessary state court documents such that a remand would be appropriate; thus, this case is properly dismissed.

IT IS HEREBY ORDERED that the Objection (ECF No. 10) is DENIED and the Report and Recommendation of the Magistrate Judge (ECF No. 8) is APPROVED and ADOPTED as the Opinion of the Court.

IT IS FURTHER ORDERED that this action (ECF No. 1) is DISMISSED for lack of subject matter jurisdiction.

IT IS FURTHER ORDERED that Defendant's pending motions/application (ECF Nos. 9, 12, 13, 19, 22, 24, 25) are DENIED as moot based on the lack of jurisdiction.

IT IS FURTHER ORDERED that this Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that an appeal of this decision would not be taken in good faith.

Dated: July 19, 2019

/s/ Janet T. Neff

JANET T. NEFF
United States District Judge